Douglas Parking Company *and* Teamsters Automotive Employees Local No. 78, affiliated with International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America and East Bay Automotive Machinists Lodge No. 1546, affiliated with International Association of Machinists and Aerospace Workers, AFL-CIO. Cases 32-CA-2902 and 32-RC-1075

June 21, 1982

DECISION, ORDER, AND DIRECTION OF SECOND ELECTION

BY MEMBERS FANNING, JENKINS, AND ZIMMERMAN

On June 23, 1981, Administrative Law Judge Clifford H. Anderson issued the attached Decision in this proceeding. Thereafter, Respondent and the General Counsel filed exceptions and supporting briefs.

Pursuant to the provisions of Section 3(b) of the National Labor Relations Act, as amended, the National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the record and the attached Decision in light of the exceptions and briefs and has decided to affirm the rulings, findings,[1] and conclusions of the Administrative Law Judge and to adopt his recommended Order.[2]

ORDER

Pursuant to Section 10(c) of the National Labor Relations Act, as amended, the National Labor Relations Board adopts as its Order the recommended Order of the Administrative Law Judge and hereby orders that the Respondent, Douglas Parking Company, Oakland, California, its officers, agents, successors, and assigns, shall take the action set forth in the said recommended Order.

IT IS FURTHER ORDERED that the election held in Case 32-RC-1075 on July 18, 1980, be, and it hereby is, set aside, and that this case be remanded to the Regional Director for Region 32 for the purpose of conducting a new election in the appropriate unit at such time as he deems that circumstances permit the free choice of a representative.

[Direction of Second Election and *Excelsior* footnote omitted from publication.]

[1] Respondent has excepted to certain credibility findings made by the Administrative Law Judge. It is the Board's established policy not to overrule an administrative law judge's resolutions with respect to credibility unless the clear preponderance of all of the relevant evidence convinces us that the resolutions are incorrect. *Standard Dry Wall Products, Inc.*, 91 NLRB 544 (1950), enfd. 188 F.2d 362 (3d Cir. 1951). We have carefully examined the record and find no basis for reversing his findings.

[2] Respondent has requested oral argument. This request is hereby denied as the record, the exceptions, and the briefs adequately present the issues and the positions of the parties.

DECISION

CLIFFORD H. ANDERSON, Administrative Law Judge: This matter was heard before me on March 10, 1981, pursuant to a complaint and notice of hearing issued on September 30, 1980, and amended on March 11, 1981, by the Regional Director for Region 32 of the National Labor Relations Board, based on a charge in Case 32-CA-2902 filed on July 24, 1980, by Teamsters Automotive Employees Local No. 78, affiliated with International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, and East Automotive Machinists Lodge No. 1546, affiliated with International Association of Machinists and Aerospace Workers, AFL-CIO (the Teamsters and the Machinists, respectively, or collectively as the Charging Party, the Joint Petitioners, or the Union), against Douglas Parking Company (Respondent or the Employer). On October 8, 1980, the Regional Director issued a Report on Objections, order consolidating cases, and notice of hearing consolidating the hearing in the previous described case with a hearing in Case 32-RC-1075 on certain objections filed by the Union to the conduct of the Employer concerning an election held on June 17, 1980.

The amended complaint, as further amended at the hearing, alleges that Respondent's agents at various times in July 1980 interrogated employees about their union activities, threatened employees with discharges because of their union activities, and created the impression among employees that their union activities were under surveillance—all in violation of Section 8(a)(1) of the National Labor Relations Act (the Act).[1] Respondent denies that it engaged in the conduct alleged in the amended complaint or that it in any way violated the Act.

The Union's objections, following withdrawal of certain portions prior to the hearing, aver generally the conduct set forth in the complaint. An additional issue, raised in the Regional Director's Report on Objections, involves a preelection employee party held by the Employer at which certain door prizes were awarded. The Union seeks a new election. The Employer argues that no conduct engaged in by its agents requires a new election.

All parties were given full opportunity to participate in the hearing, to introduce relevant evidence, to examine and cross-examine witnesses, to argue orally, and to file post-hearing briefs.

Upon the entire record herein[2] including briefs from the General Counsel, Respondent, and the Union, and from my observation of the witnesses and their demeanor, I make the following:

[1] Included in the amended complaint at the hearing was an allegation that Respondent promised employees wage increases if they voted against the Union. On brief the General Counsel moved to withdraw this allegation from the complaint, par. 6(c). The motion is hereby granted.

[2] Errors in the transcript are hereby noted.

FINDINGS OF FACT[3]

I. JURISDICTION

Respondent is a partnership existing under the laws of the State of California, engaged in ownership and operation of parking lots in Oakland, Calfornia, and vicinity. Respondent annually enjoys revenues in excess of $500,000 from its business operations and annually purchases and receives at its Oakland operations goods and services from outside the State of California of a value in excess of $50,000.

II. LABOR ORGANIZATIONS

The Teamsters and the Machinists are, and each of them is, a labor oranization within the meaning of Section 2(5) of the Act.

III. THE ALLEGED UNFAIR LABOR PRACTICES

A. *General Background*

Respondent operates various parking lots in and around Oakland, California. The partnership is owned by admitted agents Sanford Douglas, Leland Douglas, Ronald Douglas, and Dave Flett. Sanford Douglas established Respondent in 1930 and is the father of Ronald and Leland Douglas.

Respondent employs various full- and part-time employees in the Oakland area. The Union filed a petition in Case 32-RC-1075 on May 28, 1980, seeking to represent certain of these employees. The parties entered into an election agreement approved by the Regional Director on June 17, 1980, which set July 18, 1980, from 1 to 5 o'clock in the afternoon as the date and time of the representation election. The election was conducted as agreed at both a fixed and a mobile location. The Union lost the election by a tally of 14 votes for the Union, 34 against, and 1 vote challenged. On July 24, 1980, the Union filed timely objections which, excepting the objections withdrawn by the Union on September 29, 1980, are part of the instant case.

B. *Specific Allegations in the Complaint*

The allegations of the complaint are few and the disputes factually uncomplicated. They may be discussed as follows.

1. The purported questionnaire and associated interrogations

At least some of Respondent's employees work at its parking lots in parking attendant booths. During the preelection period Respondent's owners passed out campaign literature and made campaign statements and announcements to employees by visiting employees on the job. Dave Flett and Leland Douglas visited certain employees at their parking lot booths and discussed with them various issues. Included in these discussions was the presentation of a particular document prepared by Respondent which perhaps a dozen or so employees were asked to sign. All copies of the document or form were destroyed immediately after the election.[4] The language of the forms and the statements of Respondent's agents in discussing it with employees is disputed.

Respondent's agents testified that the form was a multiparagraph recitation of the Employer's position that certain of its parking lots must be operated even in the event of a strike and that, accordingly, replacements would be hired to operate the lots in the event employees went out on strike. Leland Douglas testified that the form contained but a single question which asked employees, in effect:

> Do you understand that these are our obligations, that we must continue to operate [the lots], and that in the event of a strike that they could be permanently replaced, if there was a strike?

David Flett acknowledged that he spoke with some four or five employees concerning the contents of the form and that he had some forms signed. He testified that he did not recall a signature line on the form. He specifically denied that the form contained a question or that the employees were otherwise asked if they would work during a strike. Flett testified that employees were asked only if they understood the position of the Employer and, in some cases, to sign the form to acknowledge that understanding.

Employee Percy Harriston testified that while he was working in his parking lot booth on or about July 11 he observed Dave Flett approach and converse with another employee in that employee's booth. Flett then came to Harriston's booth. Harriston testified that Flett asked him to read the document attached to a clipboard Flett was carrying. Harriston testified that he read the document, which was a four-part questionnaire. He believed the questionnaire was written so that a "yes" or "no" answer to some of the questions indicated a pro or antiunion opinion. Harriston believed that the form asked him if he would work during a strike. He testified that he signed the form intending to adopt a neutral position. Harriston signed because he believed that to refuse to sign the form would suggest to Respondent that he was prounion. Harriston recalled that Flett told him that he did not have to sign the statement.

It seems clear that the issue concerning these events is entirely factual. If, as Harriston believed, the Employer were soliciting employees concerning their intentions regarding a strike at this critical preelection time, without specific justification not present in this record, such interrogations would violate Section 8(a)(1) of the Act. If, on the contrary, the Employer's solicitation sought to obtain signatures which did no more than acknowledge that the Employer's position was understood, then no violation of the Act occurred. For the resons set forth

[3] The facts were largely undisputed. Except where otherwise noted these findings are based on the pleadings, admissions, stipulations, or uncontradicted credible testimonial or documentary evidence.

[4] I credit the unchallenged testimony that Respondent's agents destroyed most campaign material, including all the questionnaires, immediately after their apparent election victory. There is no evidence that this action was undertaken with guilty intent. I therefore reject any arguable adverse inference which might otherwise attach to Respondent because of its failure to retain the form.

below, I conclude that counsel for the General Counsel has failed to meet his burden of proof with regard to the questionnaire and related conduct. Accordingly, I shall dismiss those allegations of the complaint related to it.

The recollections of Flett and Douglas concerning the exact language and format of the form were vague and inexact as were those of Harriston. I do not rely on demeanor to support my finding here. Each witness convinced me that he was trying honestly to recollect both the events and the language of the form. Thus, the General Counsel does not meet his burden based on demeanor. Turning to probabilities, I find it likely that the language on the form was substantively as Flett and Douglas described, but that Harriston misread or confused the language and perceived multiquestion solicitation where none existed.[5] While such an error is unfortunate, and arguably resulted in the the belief by Harriston that his views on the Union were being solicited, this result cannot be attributed to Respondent.

2. The creation of the impression of surveillance of employee voting

The election was conducted from 1 to 5 p.m. on July 18 by means of a roving voting site and a permanent site at one of the Employer's parking lots. A van was parked on the lot and used in the fixed voting area balloting.

Former Board Agent Richard Zungia was involved in conducting the election at the fixed site. He testified to the following events. At or about 1 p.m., at which time five or six employees were lined up to vote, a union observer told Zungia that he thought he identified Sanford Douglas parked in a car across the street. The distance involved was some 100 plus feet. Zungia went to the identified car and spoke to Sanford Douglas, first identifying himself as a Board agent. Zungia asked the occupant of the car if his name was Sanford Douglas. Douglas answered no. Zungia then returned to the polling van and related the conversation to the union observer. The observer reasserted to Zungia that Douglas was "some type of management supervisors."

Zungia immediately recrossed the street to the parked car and asked Douglas if he was Sanford Douglas or a manager/supervisor for Douglas Parking Company. Douglas asked Zungia why. Zungia again explained his official position and assignment and asked Douglas to leave the area, noting that his presence could cause the results of the election to be set aside. Douglas responded that he would think about it for 10 or 15 minutes. Zungia returned to the polling area, explained the incident to the union observer, and commenced voting employees. After perhaphs 5 minutes, during which time five or six employees had voted, Zungia observed Douglas leave the area. The union observer was unavailable to testify because of military service.

Sanford Douglas testified that he regularly parks in company lots for the purpose of inspecting unmanned pay boxes—where customers insert coins and currency in payment of the parking fee. Consistent with this practice, he entered the employer-owned lot across from the polling area because its strategic location permits the viewing of serveral of the Employer's lots and their pay boxes. He had with him a social acquaintance who left the vehicle to make a telephone call. Zungia approached him for the first time as he was sitting in his car waiting for the return of his friend. Douglas testified that at the time he knew "something was to be held there" but that he was uncertain of the specifics of the balloting or the impact of the matter.

Douglas testified that Zungia initially asked only if he was the owner of Douglas Parking whereupon he responded, "No, I'm a partner." Zungia then left but returned in a few minutes. Zungia asked on this ocasion if he was Sanford Doulglas and he said he was. Zungia then said he was from the National Labor Relations Board and asked him to leave immediately. Douglas testified the he waited a few minutes for his friend to return to the car. When he did they immediately left the area.

I credit the testimony of Zungia over Sanford Douglas to the limited extend they differ. Douglas admittedly knew something was "going on" across the street. There is no dispute that the election and the related union campaign have involved a considerable part of his partners' time and attention during the period preceding the election. Douglas, even though he was no longer active in the day-to-day affairs of the enterprise, knew or should have known of the significance of the events across the street. The probabilities also favor Zungia. If Douglas is credited over Zungia, Zungia's action in first talking to Douglas and then returning to the polling area makes no sense. Only if Zungia's version of events—that Douglas initially denied any identification with Respondent—is credited, was the Board agent's return to the polling area and second trip to the car justified. Zungia, of course, had no interest in the outcome of the election and was concerned only with following Board procedure. Furthermore, Sanford Douglas was not likely to willingly admit an intention to observe the voting.

I find that Sanford Douglas, for reasons of curiosity or otherwise, parked some 100 or more feet away from the polling area—across a street which was carrying regular traffic—for some 5 to 15 minutes at the commencement of the polling period. During the last 5 minutes of his presence some five or six employees cast their ballots. There is no evidence that any employees other than the union observer knew of Douglas's presence. There is no evidence that Douglas communicated with any employee directly or indirectly during the events in question or that the voting was disrupted other than by Zungia's brief absences.

Without commenting here on the effect of this conduct, if any, upon the election, it is clear that the above-described conduct does not constitute a violation of Section 8(a)(1) of the Act. While counsel for the General Counsel cites certain representation cases in which employer surveillance of union meetings was found to require a new election, he did not cite to me, nor am I otherwise aware of, any Board cases finding surveillance of the polling process, without more, to constitute an unfair

[5] Were such a misreading attributable to the deliberately ambiguous drafting of the Employer, I would find it liable for the result here. However, since I do not find the evidence sufficient to support such a finding, I specifically refuse to attribute Harriston's error to the Employer.

labor practice.[6] Accordingly, I shall dismiss this allegation of the complaint.

3. The Ronald Douglas-Percy Harriston conversation

On July 17, at 10 to 11 o'clock in the morning,[7] Percy Harriston was working in his parking lot booth when he was approached by Ronald Douglas. The two had a conversation the specifics of which was disputed at the hearing. The witnesses' versions of what was said vary widely.

a. *Harriston's version*

Harriston testified that he had not had a conversation with Ronald Douglas previously but that on this occasion Douglas walked up to his booth. Douglas asked Harriston if he was going to the company party that night.[8] Harriston responded that he was not because he had a daughter coming home from school. Douglas suggested he bring his daughter to the party, but Harriston said he thought that inadvisable. Douglas then exclaimed that Harriston could go to the union party then. Harriston said he was not going to the union party either, again because of his daughter. Douglas cursed Harriston and exclaimed, "It's been good knowing you."

The conversation became heated. Douglas said he knew that Harriston had been attending union meetings. Harriston asked the source of this information and Douglas responded that he knew the identity of all who attended the union meetings and when and where they were held. Harriston asked Douglas to leave his booth and offered Douglas—apparently as a symbolic offer to quit—the keys to the booth. Harriston then suggested that coins had been left about his booth and that he felt that this was by employer design to impugn his integrity by causing his theft of the coins. Douglas said he knew nothing of the coins and was sorry to hear of the matter. Harriston reasserted he would not attend the company party. He told Douglas that he knew Douglas had learned all about the union meetings from a named individual. Douglas did not respond to this assertion, but rather again asked Harriston to attend the company party. Harriston said he would attend neither the company nor the union party. The conversation ended with Douglas walking off, again remarking after a curse, "Harriston, it's been good knowing you."

b. *Douglas' version*

Ronald Douglas testified that during his normal duties he had occasion to be near Harriston's booth. On the day in question he asked Harriston if he was coming to "our party tomorrow night." When Harriston said no, Douglas asked him why. Harriston responded that his daughter was in town. Douglas suggested Harriston bring her to the party also. Harriston declined this invitation as well. Harriston then on his own added that he was not going to any union meeting either. This was the only reference in the conversation to the Union. Douglas specifically denied at any time telling Harriston that he knew who had attended union meetings. He also denied cursing as a personal habit generally and specifically denied the cursing attributed to him by Harriston.

Douglas did recall that there was a heated discussion during the conversation which concerned the military. Harriston did not like white Air Force officers[9] and had believed that Douglas had been an officer in the Air Force. Douglas testified: "We began to argue a little bit about the intricacies of the military." On cross-examination Douglas recalled that Harriston had made various complaints to him including the assertion that someone was trying to frame him by placing coins on his parking lot booth floor. Harriston said he was suspicious of Douglas. Douglas assured him he had nothing to do with the coins.

During the conversation Douglas formed the opinion that Harriston had a bad attitude about the military service and indeed the world. This offended Douglas and he broke off the conversation saying, "Goodbye, I'll see you later."

c. *Conclusion*

There is no doubt that, if the events occurred as testified to by Harriston, Respondent has violated Section 8(a)(1) of the Act by creating the impression that employee union activities were under surveillance and by threatening an employee with discharge because of union activities. So, too, it is clear that if the conversation occurred as testified to by Ronald Douglas then no violation of the Act occurred. For the reasons set forth below, and mindful of the burden which the General Counsel bears as to each allegation in the complaint, I credit Harriston over Ronald Douglas to the extent their versions of the conversation differ. Accordingly, I find that Respondent has violated Section 8(a)(1) of the Act as alleged.

I find Harriston to be a credible witness with a sound demeanor. He gave every appearance of attempting to answer honestly the questions put to him. His testimony regarding the conversation was detailed. Harriston's memory was clear and it is unlikely he was confusing Ronald Douglas' comments with any other conversation or speaker. Thus, absent deliberate misstatement or distortion by Harriston, the events likely occurred as described.

Two aspects of Harriston's testimony are worthy of further comment. First, as noted *supra*, I do not credit Harriston's testimony regarding the form he was presented by Flett for his signature on or about July 11. I made that finding because I believe that Harriston was mistaken in his interpretation of the form. That determination is

[6] Surveillance of the creation in employees' minds of the impression of surveillance of union activities, such as employee attendance at a union meeting or handbilling, is fundamentally different from surveillance of the polling process. This is so because a voting employee, unlike an employee who is engaging in overt union activities, is not obviously favoring either side—the ballot being secret. Thus, while polling surveillance may intrude on laboratory conditions, it is less likely to violate employee Sec. 7 rights.

[7] The conversation may have occurred on July 16, but the exact date is unnecessary to resolve.

[8] The party is discussed *infra*.

[9] Harriston is black; Douglas is white.

not inconsistent with my finding here that Harriston truthfully testified concerning the July 17 conversation. Unlike the form which Harriston misinterpreted, his conversation with Douglas was not easily susceptible of misinterpretation or misrecall.

Second, Respondent correctly points out that Harriston's initial affidavit given to a Board agent on August 20, 1980, described his conversation with Ron Douglas in an abbreviated fashion, omitting among other things any reference to Douglas' alleged statements regarding knowledge of union meetings. Only in a supplemental affidavit given to counsel for the General Counsel on March 27, 1981—3 days before the hearing—did Harriston recite the events of the conversation in a manner similar to his testimony at the hearing. The inference advanced by Respondent is that Harriston recently fabricated the additional information contained in his supplemental affidavit. This recent fabrication, argues Respondent, explains the absence of the added detail in the original affidavit. I have considered this argument in light of the demeanor of each witness, the affidavits of Harriston in their entirety, and his testimony as a whole. I recognize the logical force of Respondent's argument but on this record give it little weight. This is particularly so in view of my firm determination that Harriston was an honest witness. I find that at the time Harriston gave his first affidavit, which covered a broad range of events, he either did not fully recall the conversation or the Board agent did not completely interrogate him regarding the conversation.

Further, any credibility resolution is based upon a comparison or relative weighing of the credibility of conflicting witnesses. The demeanor of conflicting witnesses may be judged one against the other. Ronald Douglas' demeanor in my view was significantly inferior to that of Harriston. Douglas seemed unusually agitated and intense during his examination. He appeared uncomfortable in his testimony and, in my view, testified with an intent to deny the allegations laid against him rather than to testify fully and completely regarding his conversation with Harriston.

Lastly, the probabilities favor Harriston's version of the conversation over Douglas'. Harriston's strong feelings of hostility and suspicion that he was being "set up" by Douglas—which each witness described as intense—would reasonably occur following a discussion of his union sympathies and Douglas' claim of having knowledge of who atended union meetings and his implied threat of discharge—his "it's been good knowing you" remark. It is less reasonable that a heated discussion should evolve out of the version of the conversation testified to by Douglas. The proposition that Harriston would initiate hostile remarks to his employer based on his asserted racial prejudice regarding military life is also unlikely.

4. Summary and remedy

I have determined that the General Counsel's allegations regarding Leland Douglas, Dave Flett, and Sanford Douglas are without merit and therefore should be dismissed. I have determined that the General Counsel's allegations that Ronald Douglas created the impression of surveillance of employees union activities and threatened employees with discharge because of their union activity have merit and should be sustained. Accordingly, I will find that in engaging in the conduct described Respondent violated Section 8(a)(1) of the Act.[10]

Having found Respondent engaged in certain unfair labor practices, I shall recommend it cease and desist therefrom and take certain affirmative action designed to effectuate the purposes of the Act. Such affirmative action shall include the posting of the normal notice with remedial language consistent with Board precedent.

V. THE UNION'S OBJECTIONS

Before me for resolution pursuant to the Regional Director's Report on Objections are Union's Objections 2 and 3 and the matter of the Employer's preelection employee meeting. These matters will be discussed separately.

1. Objection 2

Objection 2 alleges that Respondent violated employees' Section 7 rights during the critical preelection period, thus constituting conduct affecting the outcome of the election. I have discussed and resolved the allegations of 8(a)(1) violations, *supra*. The only credited evidence in support of this objection is that supporting my finding that Harriston was threatened and coerced in his preelection conversation with Ron Douglas.

The Board views any violation of employee Section 7 rights between the filing of the petition and the election as, *a fortiori*, objectionable conduct. *Dal-Tex Optical Company, Inc.*, 137 NLRB 1782, 1786 (1962). As the Board noted in *Super Thrift Markets, Inc. t/a Enola Super Thrifts*, 233 NLRB 409 (1977), there is a single exception to this rule:

> The only recognized exception to this policy is where the violations are such that it is virtually impossible to conclude that they could have affected the results of the election.

Even though the conduct involved herein was serious, it may hardly be regarded as requiring a new election if but a single employee knew of the Employer's action until after the balloting.

The Board, however, has had occasion to note that employer threats or other improper conduct toward a few employees become the subject of repetition and discussion among voters thus enlarging the affected audience and the affects of the conduct. Thus, while the statements to Harriston might not require a new election this is not the case if they had been disseminated among voters prior to the election.

There is no evidence on the record concerning the dissemination of the remarks of Ronald Douglas to Harriston among the voters prior to the election. Harriston's son was an employee and observer for the Union at the election. Presumably, he attended the union meeting the evening before the election and could have passed on in-

[10] Respondent's Motion for Summary Judgment is accordingly denied.

formation of his father's confrontations with Douglas earlier that day if he had been told of it. Perhaps Percy Harriston, contrary to his prior assertion to Ronald Douglas, did in fact go to the union meeting and repeated the conversation to others at the meeting. Perhaps the events were the subject of employee discussion at the Employer's party that night. Such speculation is without profit, however, for Harriston was not asked whether he told others of his confrontation with Douglas or when such subsequent discussion took place, if at all. I cannot find on this record that he did or did not repeat what happended to anyone before the election was over.

The burden of going forward with evidence supporting election objections falls to the objecting party, the Union here. Therefore, it would appear that the lack of evidence concerning Harriston's dissemination of the threats he received from Ronald Douglas to others would require a finding that no other employees learned of the matter before the election and that conduct was *de minimis*. The Board, however, has created a specific "presumption of repetition" regarding statements made during an election campaign. *Sol Henkind, an individual, d/b/a Greenpark Care Center, etc.*, 236 NLRB 683 (1978), and cases cited therein at 684, fn. 12. The Board presumes that conduct is described to other employees. Given that presumption I find the burden on this aspect of the case shifts to the Employer. The Employer must prove that the conduct was not disseminated prior to the election. Noting the Employer's failure to adduce evidence to meet its burden of showing that further dissemination had not occurred, I find that the remarks to Harriston were the subject of repetition and discussion among voters before the election and, therefore, the impact of Douglas' threats was widespread and no *de minimis*. I shall therefore recommend that Union's Objection 2 be found to have merit.[11]

2. Objection 3

Objection 3 alleges that the presence of the Employer's agents at various voting locations affected the outcome of the election. The sole evidence offered in support of the objection is that discussed, *supra*, concerning Sanford Douglas. I find that the conduct involved did not rise to the level requiring a new election. The Board has considered various situations involving employer intrusion into the balloting process. Where, as here, the Employer's agent did not engage in conversation with employees and there was no evidence that employees other than the observers saw the individual, the Board has not directed a new election. *El Rancho Market*, 235 NLRB 468 (1978); *Components, Inc.*, 197 NLRB 163 (1972). But cf. *Belk's Department Store of Savannah, Georgia, Inc.*, 98 NLRB 280 (1952). This is so even where the agent may be assumed to have entered the area out of curiosity rather than by mistake and even where the employer agent lingered a few minutes after being asked to leave. *Murray Ohio Manufacturing Company*, 156 NLRB 840, 853–854 (1966). Accordingly, I shall recommend Objection 3 be found to be without merit.

3. Other conduct—the Employer's preelection party

On July 17, the Employer held an employees appreciation dinner at a local restaurant for its employees. Some 60-plus individuals attended, virtually all of whom were employees. All the partners attended. An employer-prepared flyer advertised the event and announced that "door prizes" would be awarded. The flyer listed the door prizes:

> A weekend trip to Reno—all paid, 12 weekends use of new Thrify "Rent-a-Car," AM/FM stereo with Tape, Color TV, Five $20 cash door prizes (come early for best chance), five cases of beer, $174 of Groceries-1 yr. union dues, four radial tires for your car, Good food and drinks.

All advertised items were awarded to attending employees. The prizes described cost the Employer about $2,000.[12]

Respondent was founded some 50 years before 1980. Although Respondent's principals had intended to have a 50th anniversary celebration, the date of the instant party was selected after the representation petition had been filed and the election date selected. It can be reasonably inferred from the selection of the day preceding the election, the title of the gathering, and the reference to union dues in the door prize announcement, that neither the employer nor the employees were unaware of the election to be held the following day. I consider the party to be a preelection party, rather than an unrelated occurrence.

The Board has held that employer-supplied free dinners and cocktails at preelection voluntary employee meetings are legitimate campaign techniques. *Northern States Beef, Inc.*, 226 NLRB 365 (1976); *Ohmite Manufacturing Company*, 111 NLRB 888 (1955). Thus the dinner and drinks, standing alone, are not objectionable.

Prizes or raffles are not regarded by the Board *per se* objectionable, but are considered in light of all attendant circumstances. *Hollywood Plastics, Inc.*, 177 NLRB 678 (1969). As to the effect of door prizes awarded to employees prior to voting, the test is more specifically expressed by the Board in *Thrifty Drug Company*, 217 NLRB 1094, 1095 (1975):

> . . . [w]ere the prizes of sufficient value as to create in the minds of the winners a feeling of obligation to favor the Employer's position.

In considering the application of this standard it is important to distinguish between Board cases which address different factual situations. The prizes in the instant case were not given to unit employees generally but were offered only to those who attended the Employer's

[11] Indeed, even without the repetition found, the Board has frequently set aside elections based on few violations in a large unit. See, e.g., the cases cited in *Greenpark Care Center, supra*, fn. 10 at 684.

[12] The parties stipulated to the cost of these items, save for that of the rental car use which I have roughly estimated as about $200. On my own motion I correct the transcript to change the statement of Respondent's counsel from "No stipulation" to "So stipulated."

party.[13] Further, we are not dealing with raffles in which prizes are awarded after the balloting is concluded. Thus, the inducement to be measured is not the preelection value of the probability of winning a prize after the election but rather the prize itself. The prizes herein were awarded before the vote.[14]

The monetary value of the prizes awarded herein was substantial. I am aware of no Board cases dealing with closely equivalent values.[15] The prizes were numerous with five prizes representing substantial benefit to the winning employees. The remaining 22 prizes of cash, cases of beverage, and free automobile use,[16] while not of great value were not minimal gratuities. Certainly the number of employees receiving prizes was sufficient to influence the outcome of the election if, in fact, the voters were influenced by the awards.

Considering all of the circumstances surrounding the inducements, I conclude that the size and extent of distribution of the Employer's door prizes given the evening before the election destroyed the laboratory conditions necessary for a free and fair election. There must be a limit to an employer's beneficence to potential voters. Clearly, at some point the prizes become too much. While there seems to be no clear line between proper and improper inducements other than the *Thrifty Drug Company* admonition quoted *supra*, I find that the demarcation line has been crossed here. The prizes awarded were of sufficient number and value that it is likely that the receiving employees felt an obligation to favor the Employer's position. Such a risk is inherently destructive of the laboratory conditions the Board seeks to maintain in its election procedures. Accordingly, I shall recommend that the conduct described be found to require a new election be held.

4. Summary and recommendation for new election

The Union's Objections 1 and 4 were not before me for resolution. Objection 3 has been found to lack merit and I shall recommend it be overruled. Objection 2 has been found to have merit and I shall recommend it be sustained. I have also found the "other conduct" described above also required a new election be held to insure a free and reasoned selection of alternatives by employees and shall recommend the Board so find. Based on all of the above findings I recommend that the Board order a new election herein consistent with Board procedure.

Upon the above findings of fact and the entire record herein, I make the following:

CONCLUSIONS OF LAW

1. Respondent is an employer within the meaning of Section 2(2) of the Act engaged in commerce within the meaning of Section 2(6) and (7) of the Act.

2. The Teamsters and the Machinists, and each of them, are labor organizations within the meaning of Section 2(5) of the Act.

3. Respondent interfered with, restrained, and coerced employees in the exercise of their rights guaranteed them in Section 7 of the Act by creating the impression that their union activities were under surveillance and by threatening employees with discharge because of their union activities, all in violation of Section 8(a)(1) of the Act.

4. The unfair labor practices noted above affect commerce within the meaning of Section 2(6) and (7) of the Act.

5. Except as described above, Respondent has not committed any violations of the Act as alleged in the complaint.

6. By the conduct found objectionable in the section entitled "The Union's Objections," Respondent has prevented the holding of a fair election and such conduct warrants setting aside the election conducted on July 18, 1980, in Case 32-RC-2902.

Upon the foregoing findings of fact and conclusions of law, and upon the entire record, and pursuant to Section 10(c) of the Act, I hereby issue the following recommended:

ORDER[17]

The Respondent, Douglas Parking Company, Oakland, California, its officers, agents, and successors, and assigns, shall:

1. Cease and desist from:

(a) Threatening employees with discharge because of their union activities.

(b) Creating the impression among employees that their union activities are under surveillance.

(c) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them in Section 7 of the Act.

2. Take the following affirmative action which is deemed necessary to effectuate the policies of the Act:

(a) Post at Oakland, California, and vicinity locations copies of the attached notice marked "Appendix."[18]

[13] An importatnt distinction—inducements to the unit generally are viewed with greater suspicion by the Board. See, e.g., *General Cable Corporation*, 170 NLRB 1682 (1968).

[14] Board cases also distinguish between inducements at meetings which are scheduled at a time when an election is not eminent and meetings closely preceding the election date. See, for example, *Jacqueline Cochran, Inc.*, 177 NLRB 837 (1969).

[15] In *Drilco, a division of Smith Management, Inc.*, 242 NLRB 20 (1979), the Board considered the effect of a raffle of an all-expense-paid trip for two from the Texas facility to, at the option of the employee, Disneyland, Disneyworld, or Hawaii. The Board commented:

> Here, the size of the leading prize is so great as to divert the attention of employees away from the election and its purpose. In addition, such a substantial prize inherently induces those eligible to vote in the election to support the Employer's position. [242 NLRB at 21.]

[16] Although the record is not clear, I have assumed that the prizes were awarded separately; i.e., 12 awards of automobile use, 5 awards of a case of beer, and 5 awards of $20. I also assume that no employee received more than one prize. These assumptions do not affect my conclusion, however.

[17] In the event no exceptions are filed as provided by Sec. 102.46 of the Rules and Regulations of the National Labor Relations Board, the findings, conclusions, and recommended Order herein shall, as provided in Sec. 102.48 of the Rules and Regulations, be adopted by the Board and become its findings, conclusions, and Order, and all objections thereto shall be deemed waived for all purposes.

[18] In the event that this Order is enforced by a Judgment of a United States Court of Appeals, the words in the notice reading "Posted by

Continued

Copies of said notice, on forms provided by the Regional Director for Region 32, after being duly signed by its authorized representative, shall be posted by Douglas Parking Company, immediately upon receipt thereof, and be maintained by it for 60 consecutive days thereafter, in conspicuous places, including all places where notices to employees are customarily posted. Reasonable steps shall be taken by Douglas Parking Company to ensure that said notices are not altered, defaced, or covered by any other material.

(b) Notify the Regional Director for Region 32, in writing, within 20 days from the date of this Order, what steps have been taken to comply herewith.

IT IS FURTHER ORDERED that the complaint as amended be, and it hereby is, dismissed in all other aspects and that all motions inconsistent with the above are hereby denied.

IT IS FURTHER ORDERED that the Union's Objection 2 be sustained, the other conduct described in the section of this Decision entitled "Other Conduct" be found to require a new election, and that the results of the election held by the Board in Case 32-RC-1075 be set aside, and that said case be remanded to the Regional Director for Region 32 for the purpose of conducting a new election at such time as he deems the circumstances permit the free choice of a bargaining representative.

Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

After a hearing at which all sides had an opportunity to present evidence and state their positions, the National Labor Relations Board found that we have violated the National Labor Relations Act, as amended, and has ordered us to post this notice.

The Act gives employees the following rights:

To engage in self-organization
To form, join, or assist any union
To bargain collectively through representatives of their own choice
To engage in activities together for the purpose of collective bargaining or other mutual aid or protection
To refrain from the exercise of any or all such activities.

In recognition of these rights, we hereby notify our employees that:

WE WILL NOT threaten employees with discharge because of their union activities.

WE WILL NOT create the impression among our employees that their union activities are under surveillance.

WE WILL NOT in any like or related manner violate the provisions of the National Labor Relations Act.

DOUGLAS PARKING COMPANY